

Birmingham City Council

Report to Cabinet

16th May 2023



Subject: **RESPONSE TO INDEPENDENT REVIEW OF BIRMINGHAM SPECIAL EDUCATIONAL NEEDS AND DISABILITY INFORMATION, ADVICE AND SUPPORT SERVICE (SENDIASS)**

Report of: **Sue Harrison,
Director Children and Families**

Relevant Cabinet Member: **Cllr Karen McCarthy, Children, Young People & Families**

Relevant O &S Chair(s): **Cllr Kerry Jenkins, Education & Children's Social Care**

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010978/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 An independent review of Birmingham SENDIASS was undertaken by the National Children's Bureau in spring 2022. This review found a number of issues within the SENDIASS service which needed to be addressed by the Council.
- 1.2 One of the main concerns arising from the independent review is the failure of the service to comply with 18 out of 21 of the national minimum standards.

- 1.3 The Council is committed to delivering a SENDIASS service and has been exploring options for future delivery of the service to ensure that it complies with the national minimum standards.
- 1.4 This report provides an update on improvements to the service, sets out the options considered to ensure compliance with the minimum standards and seeks Cabinet's agreement for the recommended option.

2 Recommendations

- 2.1 That Cabinet:
 - 2.1.1 Notes the report produced by the National Children's Bureau following its independent review of Birmingham SENDIASS (**Appendix A**).
 - 2.1.2 Notes the improvements made so far by Birmingham SENDIASS and the plan to ensure full compliance with the national minimum standards (**Appendix B**).
 - 2.1.3 Agrees the recommendation that a robust plan and monitoring arrangements are in place to ensure the service moves towards full compliance with the national minimum standards.

3 Background

- 3.1 All local authorities are required under the Children and Families Act 2014 to provide free impartial, confidential and accurate information, advice and support about education, health and social care for children, young people and their parents and carers on matters relating to special educational needs and disability. In Birmingham this is provided by SENDIASS, a Council department.
- 3.2 All SENDIASS services are required to comply with a set of minimum standards that were developed by Information Advice and Support Services (IASS) managers, parents and Councils in consultation with the Department for Education. They are based on the law, the SEND Code of Practice and relevant quality standards.
- 3.3 In October 2021 the Secretary of State for Education issued a [statutory direction to Birmingham City Council](#) requiring the Council to take steps to improve its SEND services, including co-operating with the DfE appointed SEND Commissioner, John Coughlan.
- 3.4 In February 2022, [the SEND Commissioner published his first report](#) to the Secretary of State for Education. In this report, the Commissioner made 18 recommendations. The report and its recommendations have been accepted in full by the leadership of the Council, [as noted by Cabinet in November 2022](#).
- 3.5 One of the recommendations made by the SEND Commissioner was; '*The SENDIASS service in Birmingham should be externally reviewed with recommendations brought back to the IB (SEND Improvement Board) in due course*'.

- 3.6 The National Children's Bureau was asked to undertake an independent review of SENDIASS. This review commenced in March 2022 and considered how Birmingham SENDIASS was meeting the national minimum standards.
- 3.7 A report setting out the findings from the independent review was shared with the SEND Improvement Board in July 2022 and is appended to this report (**Appendix A**). The Council and the SEND Improvement Board have accepted the findings of this review.
- 3.8 The review concluded that Birmingham SENDIASS was non-compliant with 18 out of 21 of the national minimum standards and required significant and rapid improvement. The review also offered recommendations as to the future deliver model of the service.
- 3.9 The review also found that Birmingham SENDIASS was not sufficiently focussed on its core statutory functions. In addition to its statutory role, Birmingham SENDIASS has developed a 'Front Door' project in recent years that has provided a different service for families.
- 3.10 The 'Front Door' project had taken a social care approach and was staffed by agency workers and social work students on placement. The review found significant crossover with the statutory SENDIASS work and a lack of engagement with Birmingham Children's Trust, the commissioned provider of Children's Services.
- 3.11 This model of family support needs to align with the Early Help services provided by Birmingham Children's Trust, as commissioned by the Council.
- 3.12 From the start of May 2023 family support is being provided through an appropriate provider, Birmingham Children's Trust, enabling Birmingham SENDIASS to focus on delivering its statutory functions to support families.
- 3.13 These statutory functions have not been provided in compliance with national minimum standards for some time and need to become fully compliant as soon as possible.

4 Options considered and Recommended Proposal

- 4.1 An options appraisal was carried out, with the following options being considered:
- 4.1.1 Option 1 - Put robust plan and monitoring arrangements in place to ensure the service moves towards full compliance with the national minimum standards.
- 4.1.2 Option 2 - Secure an alternative, external, experienced provider with a strong track record of providing a family centred, legally compliant SENDIASS service, through carrying out a compliant competitive tender exercise.
- 4.2 These options were assessed against the extent to which they would enable the delivery of a fully compliant SENDIASS and address the non-compliance identified by the National Children's Bureau without delay.

- 4.3 The following five appraisal criteria have been used to assess the options. These options were revisited in March and April 2023 following new management arrangements being put in place for the service:
- 4.3.1 **Improvement and compliance** - Enables the service to quickly improve and to become compliant with the required minimum standards.
 - 4.3.2 **Impartiality** - Provides a service that is sufficiently independent and arm's length that will enable parents and children to have confidence that the service is impartial, and its advice is seen as such. Appropriate distance from the Council and Children's Trust's front door arrangements is essential.
 - 4.3.3 **Understands its strengths and weaknesses** - Develops a service that is outward looking, knows its strengths and weakness and is supported by good quality data which is uses to drive improvement
 - 4.3.4 **Constructive problem-solving approach** - Develops a service that promotes constructive problem-solving approaches to resolving differences and enabling services to correct mistakes and get the right support for parents and children at an early stage and at appropriate levels.
 - 4.3.5 **Promotes best practice** - Enables the service to become consistent with more positive practice that is evident in other SENDIASS services.
- 4.4 The option to put a robust plan and monitoring arrangements in place to ensure the service moves towards full compliance with the national minimum standards was assessed against the criteria and the following was found:
- 4.4.1 **Improvement and compliance** – The current service has had sight of the improvement plan and report since July 2022. As at January 2023, insufficient improvement against the minimum standards had been evidenced. New management arrangements have been in place since January and there is now increased confidence about the service's capacity to improve towards compliance. There is a detailed plan that will move the service towards compliance (**Appendix B**) against which significant progress has already been made.
 - 4.4.2 **Impartiality** – The NCB review report details that the arrangements in place did not offer sufficient impartiality and distance from the Council and Children's Trust's front door. The arrangements were not sufficiently distanced to allow families to have confidence in the advice being sufficiently independent and impartial. The NCB's review of SENDIASS (p12) describes the service's Impartiality Policy as '*not robust enough as it doesn't explain how the service delivers or maintains impartiality.*' Since the end of April 2023, the service is focussed on delivering its statutory functions with family support delivered by Birmingham Children's Trust. This enables sufficient impartiality for the SENDIASS work and distance from the Council and the Trust's front door.

- 4.4.3 **Understands its strengths and weaknesses** – The service as it was organised and operated up until January 2023 did not have a good understanding of its strengths and weaknesses, as demonstrated by the service's lack of acceptance of the findings of the independent review. A strong focus on developing robust systems and policies to support them has been evidenced since January 2023 which has led to improved management confidence that the service now understands its strengths and weaknesses.
- 4.4.4 **Constructive problem-solving approach** – The review report details the high number of escalations and tribunals that the service is involved in, as well as little evidence of attempting to resolve issues in a more constructive way. A significant cultural and practice shift has taken place in the team since January 2023 that has demonstrated a constructive problem-solving approach.
- 4.4.5 **Promotes best practice** – Best practice has begun to be evident within the team, with management committed to the cultural shift required to achieve this.
- 4.5 Examining this option against the appraisal criteria indicates that the service can achieve sufficient improvement in a timely way, provided that progress against the action plan is closely monitored. Option 1 is therefore the recommended option.
- 4.6 As part of this options appraisal, the Council considered how other Councils secure their SENDIASS services. Some Councils outsource these services with third sector providers and there are several not-for-profit providers with significant expertise of providing good quality, compliant services. This allows for a body of expertise in this type of advice service to be developed and shared.
- 4.7 The option to secure an alternative, external, experienced provider with a strong track record of providing SENDIASS through a compliant competitive tender exercise was considered against the appraisal criteria:
- 4.7.1 **Improvement and compliance** – Securing an experienced provider with significant experience of delivering fully compliant, good quality SENDIASS would offer good potential for achieving rapid improvement when the process is complete. The process to complete a compliant competitive tender following a key decision will take three months with a further three months to mobilise the service. Improvement could continue during the mobilisation period. However, as accelerated improvement is currently in train, going through a commissioning exercise at this point in time could slow down the pace of improvement.
- 4.7.2 **Impartiality** – This option would ensure the service was fully independent of the Council and offered information advice and guidance that is impartial. Appropriate distance from the Council and the Children's Trust's front door arrangements would be achieved. The current arrangements since May 2023 have resolved this issue.

- 4.7.3 **Understands its strengths and weaknesses** – Any tender process would seek evidence that appropriate policies, improvement arrangements, data and information would be in place. Becoming part of a larger family of SENDIASS services would allow for proven ways of applying data and quality assurance processes to be applied. These would be evaluated during any tender processes.
- 4.7.4 **Constructive problem-solving approach** – This option would allow best practice in terms of mediation, problem solving and early rectification of mistakes to be shared from other SENDIASS any successful provider currently manages. Evidence of doing this will be examined during the tender process. The in-house service is now showing problem solving approaches when dealing with queries and requests for support from families.
- 4.7.5 **Promotes best practice** – This option would allow for consistency to be achieved and close comparison and sharing of good practice from other SENDIASS any successful provider manages. The in-house service is now adopting best practice in these areas.
- 4.8 Option 2 would have allowed for improvement to be achieved within a realistic timescale. However, given that noticeable improvement has begun to be made by the service and a robust action plan is in place, undertaking a tender exercise is not recommended at this time, as it could now risk delaying the service's improvement journey timescale.

5 Consultation

- 5.1 The National Children's Bureau's report was taken to the SEND Improvement Board in July 2022 where its findings were discussed.
- 5.2 Engagement has taken place on the review, the options appraisal and the recommended option with the Cabinet Member for Children, Young People and Families and the Corporate Leadership Team (CLT).
- 5.3 The Education and Children's Social Care Overview and Scrutiny Committee considered a redacted version (to remove individuals' personal information) of the National Children's Bureau's report at its reconvened meeting on 25 January 2023.
- 5.4 At that meeting, the Committee agreed three recommendations:
 - 5.4.1 That the Director of Children's Services ensures that all planning, commissioning and reviewing of services in her Directorate complies with the SEND Code of Practice by ensuring it seeks to engage and hear the voices of children and young people, and their parents.
 - 5.4.2 That the appropriate and adequate funding and resourcing was put in place for SENDIASS as a matter of urgency; that the service remains in-house; and that an agreement for joint commissioning work with the NHS was sought as a priority. This path offers the most effective future arrangement for a

SENDIASS in Birmingham reflecting the national pattern of SENDIASS delivery across the country.

- 5.4.3 The Chair together with the Scrutiny Officer to confirm outstanding questions that would be submitted to the report author based on the discussion during the meeting, with a request these were answered by the meeting of Cabinet on 14 February 2023.

5.5 The Committee's first and second recommendations have been accepted.

5.6 In relation to the third recommendation, the Chair and the Scrutiny Officer confirmed outstanding questions will be submitted to the report author, with a request these were answered by the meeting of Cabinet on 14 February 2023. However, it was not possible for the independent author to be compelled to respond by a particular date and no written questions for the independent auditor were received.

5.7 A petition, signed by over 1,000 people, asked Birmingham MPs to raise the 'threats to Birmingham SENDIASS' with the Government Minister responsible for SEND. This petition was submitted at the Full Council meeting in February 2023 and was considered when the options appraisal was revisited.

5.8 When the independent report was published, the Council received feedback from SENDIASS staff, some elected members and a limited number of families opposing any changes to the method of delivering the SENDIASS service. The Council has received no complaints about the SENDIASS service since January 2023.

6 Risk Management

6.1 Risks in delivering against the recommendations made by the SEND Commissioner are identified, evaluated and controlled through the SEND Improvement Board.

6.2 We are aware that we need to make rapid improvements to this service to ensure compliance with the national minimum standards. Any delay to this means families are continuing to receive a non-compliant service.

7 Compliance Issues:

7.1 **How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

7.1.1 The recommended option supports the delivery of the Council's priorities as set out in the Birmingham City Council Plan 2022:

- Birmingham is an aspirational city to grow up in - we will improve protection of vulnerable children and young people (including those with Special Educational Needs and Disability).

- Birmingham is an aspirational city to grow up in - we will inspire our children and young people to be ambitious and achieve their full potential.

7.2 Legal Implications

- 7.2.1 On 15 October 2021 the Secretary of State for Education issued a statutory direction under section 497A(4B) of the Education Act 1996, directing the Council to take a number of steps including complying *‘with any instructions of the Secretary of State or the SEND Commissioner in relation to the improvement of the Council’s exercise of its SEND functions and provide such assistance as either the Secretary of State or the SEND Commissioner may require’*.
- 7.2.2 The Council is therefore required to act upon the recommendations set out in the SEND Commissioner’s Report dated February 2022, one of which was that there should be an external review of Birmingham SENDIASS with recommendations brought to the SEND Improvement Board.
- 7.2.3 Section 32 of the Children and Families Act 2014 places a duty on the Council to “...*arrange for children and young people for whom it is responsible, and the parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs of the children or young people concerned...*”. Part 2 of the statutory guidance ‘the SEND Code of Practice January 2015’ sets out further requirements for operating Information and Advice Services, including the requirement that they be impartial and provided ‘at arms’ length’ from the Local Authority and ICB.
- 7.2.4 Under S.111 Local Government Act 1972 the Council has power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

7.3 Financial Implications

- 7.3.1 The proposed 23/24 net budget is £718,169. This includes estimated Pay Award and other adjustments.
- 7.3.2 There has also been a temporary budget earmarked for Agency resource required in the service for 23/24. This is approximately £455,242 and is to help fund the additional resource required on a short term basis.
- 7.3.3 The above 23/24 budgets quoted are indicative and a review into historical financial governance of the service is currently in progress.
- 7.3.4 The scope of the review includes the historical and current year budget setting and monitoring processes, expenditure on agency staffing, and wider compliance with the Authority’s financial and governance controls. Work on budget setting and monitoring is complete, whilst the review of agency staff

recruitment and expenditure, as well as financial and governance control compliance is on-going as further investigation is undertaken following initial findings.

7.4 Procurement Implications

- 7.4.1 There are no procurement implications related to the recommended option.

7.5 Human Resources Implications

- 7.5.1 As per the recommendation in 2.1.3, there are no immediate HR implications as the recommendation is for the service to be kept in-house.
- 7.5.2 Staff recruitment and management will continue to be conducted in accordance with the Council's policies and procedures.
- 7.5.3 A redesign of the SENDIASS service is planned to take place this year with the aim of ensuring the service has the right number of staff at the right level to successfully deliver the service and achieve positive outcomes moving forward. At present the service is carrying a number of vacancies and these will be reviewed as part of the redesign.

7.6 Public Sector Equality Duty

- 7.6.1 Inspections of Birmingham's services for children and young people with SEND by Ofsted and the Care Quality Commission (CQC) have identified areas of weakness that needed to be addressed.
- 7.6.2 The Council has had regard to the Public Sector Equality Duty and in particular notes that the functions carried out by the Council's SEND services, including SENDIASS, are designed to support the aims set out in section 149 of the Equality Act 2010, particularly for those with the protected characteristics of disability and age.

8 Appendices

- 8.1 **Appendix A** - National Children's Bureau review of Birmingham SENDIASS.

- 8.2 **Appendix B** – Action plan

9 Background documents

- 9.1 Local area SEND inspection (May 2021)
<https://files.ofsted.gov.uk/v1/file/50166306>
- 9.2 Statutory Direction to Birmingham City Council in relation to its Special Educational Needs and Disability (SEND) service provision, under Section 497a(4b) of The Education Act 1996 (October 2021)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026624/Statutory_Direction_-_Birmingham_City_Council.pdf

- 9.3 First Report to the Secretary of State for Education by John Coughlan CBE,
Commissioner for SEND Services in Birmingham (February 2022)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1076725/Final_Improving_Special_Educational_Needs_and_Disability_SEND_Services_in_Birmingham.pdf